

September 26, 2005

Carol J. Monahan  
Chief Counsel  
Office of Environmental Health  
Hazard Assessment  
*[Address Redacted]*  
Sacramento, CA 95814

**Re: Your Request for Advice**  
**Our File No. A-05-172**

Dear Ms. Monahan:

This letter is in response to your request for advice on behalf of Dr. Ellen Gold regarding the honorarium provisions of the Political Reform Act (the “Act”).<sup>1</sup>

### **QUESTIONS**

1. Is Dr. Gold prohibited from accepting an honorarium that was agreed upon and for which services were provided prior to the date she assumed office?
2. If the payment can be accepted, how should it be reported on Dr. Gold’s Statement of Economic Interests (Form 700)?

### **CONCLUSIONS**

1. Dr. Gold is not prohibited from accepting the honorarium.
2. If Dr. Gold rendered services that constituted full and adequate consideration for the payment, the honorarium may be disclosed as “income” on Schedule C of Form 700. Otherwise, the payment should be disclosed as a “gift” on Schedule E.

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

## FACTS

Dr. Ellen Gold is a professor in the Department of Health Sciences at the University of California, Davis. On August 11, 2005, she was appointed to the Office of Environmental Health Hazard Assessment (“OEHHA”) Developmental and Reproductive Toxicant Identification Committee (“DART-IC”). The DART-IC is governed by Health and Safety Code Section 25249.8(b) and Title 22, Cal. Code of Regs. § § 12301-12305. Section 12304 specifically incorporates the provisions of Government Code § § 81000 to 91015 and the related regulations and applies them to members of the DART-IC.

Dr. Gold was asked in March 2005 to attend and give a presentation at the Wyeth Conference on Therapeutic Options for Menopausal Health that was held in Seattle, Washington on July 10-12, 2005. Dr. Gold’s presentation was titled “Longitudinal Analysis of Vasomotor Systems and Race/Ethnicity Across the Menopausal Transition.” This presentation required several hours of meetings with other presenters prior to the meeting to coordinate presentations, as well as several more hours to prepare the presentation itself and time necessary to travel to, attend, and make the presentation in Seattle. The conference was sponsored exclusively by Wyeth, a company that manufactures and markets pharmaceuticals, consumer health care products, and animal health care products. Chemicals manufactured or marketed by this company could come before the DART-IC.

The agreed compensation for Dr. Gold’s attendance at the conference and her presentation was a \$2,500 honorarium plus reasonable travel expenses. Dr. Gold attended the conference and made her presentation on July 11, 2005. On August 15, 2005, Dr. Gold received a check for the \$2,500 honorarium and travel expenses totaling \$391.64.

## ANALYSIS

Section 89503 prohibits various state officials, including members of state boards and commissions and designated employees of state agencies, from accepting an honorarium from any source if the member or employee would be required to disclose the receipt of income or gifts from the source on his or her Statement of Economic Interests (Form 700).<sup>2</sup>

However, because she both agreed to participate and participated in the conference prior to her appointment to DART-IC, her receipt of the honorarium does not constitute receipt of an illegal honorarium. Presumably, one of the purposes for prohibiting certain state officials and employees from accepting honoraria was to eliminate the appearance of corruption when they receive payments for activities requiring little or no work in exchange. This purpose is not served by prohibiting payment for activities engaged in by the official or employee prior to his or her

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<sup>2</sup> Although you have not provided specific facts regarding Dr. Gold’s disclosure requirements, we will assume for purposes of this letter that Wyeth is a source that Dr. Gold is required to disclose on her statement of economic interests under the agency’s conflict-of-interest code.

government employment. (*Melendez* Advice Letter, No. A-93-317; *Blanning* Advice Letter, No. A-94-317.)

For reporting purposes, Dr. Gold must disclose the honorarium and travel payment on her next statement of economic interests. Whether she reports the payments as “income” or a “gift” depends on whether she rendered services that constituted full and adequate consideration for the payments. Under section 82028(a), any person who claims that a payment is income and not a gift due to the rendering of full and adequate consideration has the burden of proving this if the claim is questioned. If Dr. Gold determines the payments are income, she will disclose them on Schedule C of Form 700. Gifts are disclosed on Schedule E.<sup>3</sup> Travel payments may be disclosed separately on Schedule F, or may be disclosed on the same schedule as the honorarium. (Section 87207(c).)

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

Original Signed by  
By: Carla Wardlow  
Chief, Technical Assistance Division

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<sup>3</sup> However, if a gift, the gift limit of section 89503 would not apply since the payment was accepted prior to the date Dr. Gold became a public official.